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UNITED STATES BANKRUPTCY COURT

DISTRICT OF ARIZONA

) Chapter 11
) Case Nos. 98-12547 through) 98-12570-ECF-CGC
Debtors.) Jointly Administered
	Contingent Motion for Authority to Assume and Assign Nonresidential Real Property Lease (Store #1867)
	Debtors.

Debtor Mayfair Partners, L.P. ("Mayfair") requests the Court enter an order pursuant to Section 365 of the Bankruptcy Code, authorizing the Debtor to assume and assign one (1) lease of nonresidential real property associated with store #1867, in the event that the sale of the fee property related to the store to Zinx Real Estate Holdings and its successors and assigns closes pursuant to the terms of the Order on Ninth Motion for Authority to Sell Real Property Outside the Ordinary Course of Business Free and Clear of Liens [DE 1139]. In support of this Motion, Debtor states as follows:

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I. JURISDICTION

1. Pursuant to 28 U.S.C. §§ 1334 and 157, the Court has jurisdiction to hear this Motion. Pursuant to 28 U.S.C. § 157(b)(2)(A), (M), and (O), this Motion presents a core proceeding. The relief requested can be authorized in accordance with with 11 U.S.C. § 365(a) and (f).

II. BACKGROUND

- 2. On October 5, 1998 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11, Title 11 of the United States Bankruptcy Code (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Arizona (the "Court"). Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are operating their businesses and managing their property as debtors in possession.
- 3. Prior to the filing of these cases Debtor Boston Chicken, Inc. ("BCI") owned the fee property for store #1867 located Midlothian, Virginia. As part of that ownership, BCI entered into a non-residential real property lease (the "Lease") with Mayfair, which in turn entered into a real property sublease with Einstein/Noah Bagel Corp. ("ENBC").
- 4. On August 24, 1999, BCI obtained authority from the Court to sell the fee property for store #1867 to Zinx Real Estate Holdings ("Zinx") and its successors and assigns, as described in the Order on Ninth Motion for Authority to Sell Real Property Outside the Ordinary Course of Business Free and Clear of Liens.

III. RELIEF REQUESTED

- 5. Mayfair seeks authority to assign its entire interest in the Lease to Zinx. Pursuant to the assignment agreement, Mayfair will assign all of its right, title and interest to the Lease to Zinx. Subject to approval of this agreement by the Court, Zinx will assume all of BCI's obligations.
- 6. The debtor Mayfair has determined that it is in its best interests and that of all Debtors, their creditors, and these estates to assume and assign the Lease in connection with the sale of the fee property. The assumption and assignment of the Lease is in the best interests of the estates because substantial unsecured claims for rejection will be mitigated.
- 7. Although a definitive agreement has not been executed between the parties, it is anticipated that a final agreement will be signed before the date for a hearing on this motion.
- 8. The Debtor Mayfair has undertaken an investigation of the financial strengths of Zinx. Given the results of this investigation, the Debtor believes that the financial strength of the assignee provides sufficient adequate assurance that no future defaults under the terms of the Lease will occur.

WHEREFORE, the Debtor Mayfair respectfully requests that the Court enter an order authorizing the Debtor Mayfair to assume and assign the lease contingent upon the closing of the sale of the store to Zinx Real Estate Holdings and its successors and assigns pursuant to the terms of the Order on Ninth Motion for Authority to Sell Real Property Outside the Ordinary Course of Business Free and Clear of Liens as described herein.

1	Dated this 7 th day of September, 1999
2	DEBTORS AND DEBTORS IN POSSESSION
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4	By: /s/ H. Rey Stroube, III
5	One of their Attorneys
_	AKIN, GUMP, STRAUSS, HAUER &
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14	Phoenix, Arizona 85004-4429
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1.6	(602) 262-5747
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18	<u>CERTIFICATE OF SERVICE</u>
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	The undersigned hereby certifies that on September 7, 1999 the foregoing document was served by E-mail or first class United States Mail, postage prepaid, on all parties on the Master
20	Service List #12 dated August 26, 1998.
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23	/s/ Laura DeWitt
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